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# In the Supreme Court of the United States

OCTOBER TERM, 1972

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No. 72-521

IRISH NORTHERN AID COMMITTEE, PETITIONER

*v.*

ATTORNEY GENERAL OF THE UNITED STATES

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

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## BRIEF FOR THE RESPONDENT IN OPPOSITION

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### OPINIONS BELOW

The order of the court of appeals affirming the district court's disclosure order (Pet. App. A) was entered without an opinion. The opinion of the district court (Pet. App. B) is not yet reported.

### JURISDICTION

The judgment of the court of appeals was entered on August 24, 1972. The petition for a writ of cer-

tiorari was filed on September 28, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether the First Amendment bars the government from requiring a registered foreign agent to make available for inspection its books and records, including a list of its contributors, as required by the Foreign Agents Registration Act.

2. Whether the compelled disclosure of books and records that petitioner is required by statute to maintain and produce on demand for government examination violates the Fourth Amendment.

## STATEMENT

Petitioner, the Irish Northern Aid Committee, is an unincorporated association with headquarters in New York City. In January 1971, it registered as an agent of a foreign principal, the Northern Aid Committee of Belfast, Ireland, by filing with the Department of Justice a registration statement, pursuant to Section 2 of the Foreign Agents Registration Act, 22 U.S.C. 612. It has since filed with the Department semi-annual Supplemental Statements as required by the Act (22 U.S.C. 612(b)); these statements show substantial disbursements to its foreign principal during the covered six-month periods, but they do not claim or report any receipts.

Shortly after filing the second such Supplemental Statement in March 1972, petitioner was advised by

the Department that the submitted information was incomplete and failed to comply with the Act.[1] Various deficiencies were specifically noted, including: (a) the failure to list as a foreign principal the Provisional Wing of the Irish Republican Army; (b) the failure to reveal monies that had been received for or on behalf of its foreign principal (the disclosed disbursements for this period were admittedly over $128,000); and (c) the failure to satisfy the Act's format and filing requirements with respect to petitioner's political propaganda (22 U.S.C. 614).

In response, petitioner's counsel at the time, Frank Durkan, informed the Department on April 7, 1972, that the requested information would be forthcoming as soon as petitioner's relationship with the Provisional Irish Republican Army had been verified. In the letter, he offered to assist the government in obtaining the other information sought and raised no objection, constitutional or otherwise, to its production. More than two months passed and still the requested information was not submitted.[2]

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[1] This Statement covered the six-month period ending January 29, 1972; it was received by the Department on March 21, 1972, almost a month after the 30-day statutory deadline.

[2] On April 14, 1972, petitioner mailed to the Department a schedule of remittance showing that almost all of the $128,099 it had declared as disbursements in its March 1972 Supplemental Statement had been remitted to one Joseph Cahill, almost entirely in cash. In a letter dated May 15, 1972, seeking to ascertain whether petitioner's relationship with the Provisional Wing of the Irish Republican Army had yet been verified, the Department advised petitioner that the April 14

On June 23, 1972, a Special Agent of the F.B.I. hand-delivered to petitioner's representative a letter from then Acting Assistant Attorney General A. William Olson, advising that agents of the F.B.I. had been directed to examine petitioner's books and records, pursuant to their authority under Section 5 of the Act, 22 U.S.C. 615. The agent was told that the books and records were not then available, but that the material would be made available for inspection on June 26, 1972. On that date, however, the agent was advised by petitioner's representative that the matter had been referred to its lawyers and the books and records would not be produced.

The government then instituted the present suit in the United States District Court for the Southern District of New York, seeking a preliminary and permanent injunction requiring petitioner to comply with the Act and produce its books and records for inspection.[3] Petitioner opposed the relief on the grounds (1) that the action was impermissibly designed to gather evidence for a grand jury then sitting in Fort Worth, Texas,[4] (2) that disclosure of records

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schedule of remittance was incomplete since it failed to enumerate petitioner's contributors and the sum each contributed, as required by Section 2(a)(7) of the Act, 22 U.S.C. 612(a)(7). No list of contributors has been furnished.

[3] No attempt was made to enjoin petitioner's activities on behalf of its foreign principal pending its compliance with the Act, as is authorized by the statute. See 22 U.S.C. 618(f).

[4] A federal grand jury was impanelled in Fort Worth, Texas, on May 2, 1972, to investigate "possible violations of the

would reveal the identity of members and contributors, exposing them and their families to reprisal, and (3) that insofar as the Act requires disclosure of the information requested, it violates the First Amendment. The district court (Pet. App. B) rejected petitioner's arguments and held that the government was entitled to injunctive relief; it ordered petitioner to produce its books for inspection by authorized agents (Pet. App. B). The court of appeals affirmed without an opinion (Pet. App. A).[5]

## ARGUMENT

1. Petitioner contends here, as below, that its books and records, which it is by statute required to "keep and preserve" and to make available "at all reasonable times to the inspection" of an appropriate government official, cannot be opened to government examination without undue interference with First Amendment rights.[6] Although petitioner has con-

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[Foreign Agents Registration] Act, gun control acts, conspiracy laws and other Federal criminal statutes," including "the shipment of arms and/or funds to the Provisional Irish Republican Army" (Pet. App. 6A). On June 12, 1972, four of petitioner's members were subpoenaed to appear before the grand jury. And see n. 8, *infra*.

[5] On October 10, 1972, this Court granted petitioner's application for a stay pending disposition of the present petition.

[6] Section 5, 22 U.S.C. 615, provides in pertinent part:

> Every agent of a foreign principal registered under this Act shall keep and preserve while he is an agent of a foreign principal such books of account and other records with respect to all his activities, the disclosure of which is

sistently asserted that it is constitutionally immune from having to make *any* of its records available, it now seeks to justify its unqualified refusal to permit an examination by pointing to a single category of information that it considers protected by the First Amendment—its list of contributors. The disclosure of this list, it is said, "would markedly burden [the contributors'] First Amendment right to freedom of association" (Pet. 14).[7] This alone is offered as basis

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required under the provisions of this Act, in accordance with such business and accounting practices, as the Attorney General, having due regard for the national security and the public interest, may by regulation prescribe as necessary or appropriate for the enforcement of the provisions of this Act * * *. Such books and records shall be open at all reasonable times to the inspection of any official charged with the enforcement of this Act. It shall be unlawful for any person willfully to conceal, destroy, obliterate, mutilate, or falsify, or to attempt to conceal, destroy, obliterate, mutilate, or falsify, or to cause to be concealed, destroyed, obliterated, mutilated, or falsified, any books or records required to be kept under the provisions of this section.

Rule 500(a), 28 C.F.R. 5.500(a), promulgated under Section 5, enumerates certain books and records which registrants are required to keep and preserve. These include correspondence and other written communications relating to the registrant's activities on behalf of its foreign principal, minute books, records of persons to whom political propaganda has been transmitted and financial records including bank statements and contributor lists.

[7] Petitioner's concern with the First Amendment rights of its alleged contributors is puzzling, since in its various Supplemental Statements filed with the Department of Justice under 22 U.S.C. 612(b), including the most recent filing on July 29, 1972, petitioner has asserted that it has received *no*

for sustaining petitioner's general refusal to perform its statutory obligation to produce its books and records. But the production order of the district court cannot be sidestepped by a reformulation of the issue in this Court. Indeed, such an effort amounts to a tacit admission that no First Amendment interests would be implicated by disclosure of the bulk of the information sought by the government.

Nor does petitioner stand on firmer constitutional footing when the focus of inquiry narrows to the contributor lists. Petitioner has not been asked to disclose the names of its *members*. And, to the extent that there may be some right of "associational privacy" in a mere financial contributor, inhering in that status alone and without regard to any continuing affiliation, petitioner has made no showing that any First Amendment rights of such people in aiding the petitioner would be offended by disclosing their contributions to the government under the statute.[8]

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contributions. Instead, the statements indicate that it raises money "by concerts, dances, cocktail parties, etc. throughout the United States * * *." The inconsistency between its denial that it receives contributions and its invocation of the First Amendment protection of its so-called "contributor lists" has never been explained.

[8] The only attempt to show that there might be *any* adverse consequences from such disclosure is found in the affidavit of Michael Flannery, an official of petitioner who sought unsuccessfully to intervene. His affidavit averred: that a witness before the Fort Worth grand jury, who had been committed to jail for contempt, had lost his job; that three nurses from a Fort Worth hospital who picketed the court house in that city had lost their jobs; and that a person whose subpoena to testify in Fort Worth had been cancelled had a brother

Unlike the membership-list cases on which petitioner relies, the record here does not reveal a local climate which suggests either threatened or actual harassment of anyone associated with petitioner; nor is there any cause to fear that compulsory disclosure will lead to interference with the assertion of legitimate grievances. Compare *NAACP* v. *Alabama*, 357 U.S. 449, 462-463; *Gibson* v. *Florida Legislative Committee*, 372 U.S. 539, 548 n. 3, 556-557; *Bates* v. *City of Little Rock*, 361 U.S. 516, 521-522; *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U.S. 293, 296.[9]

Moreover, the disclosure of contributor lists by foreign agents, such as petitioner, is grounded on precisely the type of significant government interest that this Court found wanting in the cases just cited.[10] The Foreign Agents Registration Act of

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in jail in Belfast. But none of these rather remote events shows any real possibility of reprisal against contributors of petitioner.

[9] These cases all dealt with demands by certain state or local officials for membership lists of the National Association for the Advancement of Colored People. This Court specifically noted that the organization had made available to the public officials all other records and information except the membership lists, thus establishing the good-faith nature of its specific claim. See *NAACP* v. *Alabama*, *supra*, 357 U.S. at 463-464; *Gibson* v. *Florida Legislative Committee*, *supra*, 372 U.S. at 542-543; *Bates* v. *City of Little Rock*, *supra*, 361 U.S. at 519-521. By contrast, the district court in this case explicitly found that "here is a case in which [petitioner] has delayed, stalled, and finally refused to provide information required by law" (Pet. App. 7A).

[10] In each case the Court found that there was no significant government interest that could honestly be said to justify

1938 is basically a reporting and disclosure statute. As expressed in the preamble to its 1942 amendments (56 Stat. 248):

> It is hereby declared to be the policy and purpose of this Act to protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in the light of their associations and activities.

When the Act was amended in 1966 to provide, *inter alia*, for the granting of injunctive relief to compel compliance, the Senate Foreign Relations Committee reiterated that the basic objective of the legislation was "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political."[11] Congress' overriding con-

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a demand for disclosure of the membership lists in light of the serious and demonstrable consequences for the right of association that would follow from any compelled disclosure. See *NAACP* v. *Alabama*, *supra*, 357 U.S. at 463-464; *Gibson* v. *Florida Legislative Committee*, *supra*, 372 U.S. at 546, 551; *Bates* v. *City of Little Rock*, *supra*, 361 U.S. at 525-527; *Louisiana* v. *NAACP*, *supra*, 366 U.S. at 296-297.

[11] S. Rep. No. 143, 89th Cong., 1st Sess., p. 1 (1965). The House Judiciary Committee offered an identical explanation. H. Rep. No. 1470, 89th Cong., 2d Sess., p. 2 (1966).

cern was that the public "be informed as to the identities and activities of such persons and so be better able to appraise them and the purposes for which they act." S. Rep. No. 143, 89th Cong., 1st Sess., p. 1 (1965). As Mr. Justice Black explained in his dissenting opinion in *Viereck* v. *United States*, 318 U.S. 236, 251: "Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment." [12]

There can be no doubt that Congress contemplated public disclosure of information about contributions. The Act specifically requires disclosure of the books and records that the Attorney General by rule requires to be maintained (22 U.S.C. 615). Rule 500(a)(5), 28 C.F.R. 5.500(a)(5), issued by the Attorney General under this authority, requires a registrant to maintain "records of income • • • showing names and addresses of all persons who paid moneys to • • • and the date on which each item was paid • • •." Statutory authority for this rule is two-fold.

First, the act defines an "agent of a foreign principal" to include a person who, among other things, "within the United States *solicits*, *collects*, disburses, or dispenses, *contributions*, loans, money, or other things of value for or in the interest of such foreign principal • • •" (emphasis added). Second,

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[12] In his dissenting opinion, joined by Justice Douglas, Justice Black argued against an unduly narrow construction of the Act; the provision the Court interpreted was later expanded by Congress.

Section 2(a)(7), 22 U.S.C. 612(a)(7), provides for disclosure of information about contributions.[13] Petitioner argues that the latter provision relates only to those persons, other than a foreign principal, who are so closely related to the foreign principal that the registrant can be deemed to act as their "agent" also (Pet. 13). But the legislative history of Section 2(a)(7) makes it clear that Congress did not intend the provision to be read so narrowly.[14]

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[13] Section 2(a)(7) provides for the disclosure of: "The name, business, and residence addresses, and if an individual, the nationality, of any person other than a foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act under such circumstances as require his registration hereunder; the extent to which each such person is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party or by any other foreign principal; and *the nature and amount of contributions*, income, money, or thing of value, *if any, that the registrant has received during the preceding sixty days from each such person in connection with any of the activities referred to in clause (6) of this subsection, either as compensation or for disbursement or otherwise and the form and time of each such payment and from whom received.*" (Emphasis added.)

[14] As originally enacted, the Section called for disclosure about "any person who has within the preceding sixty days contributed or paid money or anything of value to the registrant * * * and the amount or value of the same" (56 Stat. 252; emphasis supplied). When Congress held hearings on the Act prior to drafting the 1966 amendments, it was brought to the attention of the Senate Committee on Foreign Relations that foreign agents were avoiding disclosure of contributions by operating through unregistered conduit organizations. Payments were being made to a conduit, rather than to the regis-

Whether this congressional requirement unduly intrudes upon First Amendment values depends, as this Court has so often recognized (see n. 10, *supra*), on whether the government's need for the information sought is sufficiently compelling to outweigh the

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trant, and then the contributions were being passed through the registered foreign agent to another conduit, which might or might not eventually forward them to the foreign principal. Thus, while the registered agent would report its disbursements, it would make no disclosure with respect to the source of the money or the use to which it was being put. See Hearings on Activities of Nondiplomatic Representatives of Foreign Principals in the United States Before the Senate Committee on Foreign Relations, 88th Cong., 1st Sess., pts. 9 and 12 (1963), subsequently referred to as "Hearings."

Such a practice was considered by the Committee to be "inimical to the interests of the United States," and it recommended that it "should be dealt with in the new legislation." S. Rep. No. 875, 88th Cong., 2d Sess., p. 5 (1964). As Chairman Fulbright observed: "* * * not even the conduit, much less the Department of Justice or the Congress, knows the origin of the money and what it is used for in circumstances of this kind." Hearings, pt. 12, p. 1711. "The whole purpose of the registration is to reveal what has been done, what is being done by a foreign agent," he stated, "and, if they are to be allowed to use innumerable conduits or other organizations, who do the work, it completely nullifies the objective, thwarts the objective, of the Foreign Agents Registration Act * * *." *Id.* at 1718.

This is essentially what prompted the amendment of Section 2(a)(7) to its present form in 1966—not to narrow its coverage, as petitioner seems to suggest, but to expand it. The new language was intended to require disclosure of "the nature and amount of contributions" *received by* the foreign agent, whether directly or indirectly, from "any person other than a foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act * * *" (22 U.S.C. 612(a)(7)). And see 28 C.F.R. 5.201(e).

interest of the individual in anonymity. Here, the courts below struck the proper balance. As the district court observed, the Act informs the government about the motives and activities of persons operating to manipulate American foreign policy, perhaps complicating the government's conduct of delicate foreign relations. It also brings to public attention—if its requirements are honored—the true connection, whether foreign or domestic, of a group engaged in distributing political propaganda or supporting a foreign political faction, and opens up its financial and organizational activities to public scrutiny. Thus, the American public is in a better position to make an informed choice whether to support the organization, by membership or contribution.[35]

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[35] These interests are similar to those protected by the reporting and disclosure requirements of other federal statutes that this Court has upheld against constitutional challenge. See, *e.g.*, *Burroughs and Cannon* v. *United States*, 290 U.S. 534, 545-548, sustaining the Federal Corrupt Practices Act (now superseded by the Federal Election Campaign Act of 1971, 86 Stat. 20) as protecting an important government interest. And see *United States* v. *Harriss*, 347 U.S. 612, 625, sustaining the domestic Lobbying Act, 2 U.S.C. 261 *et seq.*, against a First Amendment challenge.

In *Harriss* the Court observed, in dealing with legislation regulating organizations which, for hire, attempt to influence policy, that Congress and the public have a vital interest in learning "who is being hired, who is putting up the money, and how much" (347 U.S. at 625). In balancing the interest of the public to know against the First Amendment interest of those required by statute to report and disclose information similar to the information sought in the present case, the Court considered the latter to be "too remote to require striking down a statute which on its face

Petitioner engages in activities to promote the cause of one of the factions in the violent disturbances currently raging in Northern Ireland. The government and the people of the United States have an overwhelming interest in full and candid disclosure of petitioner's activities in this regard. To the limited extent that an examination of its books and records, including the contributor lists, might intrude on associational privacy, that intrusion is in this instance fully justified, especially since there has been no showing here that disclosure would adversely affect the ability of the organization and its members to pursue legitimate ends protected by the First Amendment.

2. Petitioner also contends that the government's request for information is in essence an impermissible administrative "search" under the Fourth Amendment, because the inquiry is for an illegitimate purpose and amounts to a deprivation of "privacy" that cannot be justified by any countervailing government interest.

This argument is insubstantial. It rests primarily on the contention that the books and records sought in this suit are actually being requested for use in connection with a grand jury investigation in Fort Worth, Texas. But the government explicitly stated in the district court, through affidavits, that its purpose in filing this suit was not to secure evidence

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is otherwise plainly within the area of congressional power and is designed to safeguard a vital national interest" (347 U.S. at 626).

for the grand jury (Pet. App. 8A-9A). Indeed, the measured and deliberate efforts to secure from petitioner the information that it is obliged by the Act to make available long predated the impanelling of the Fort Worth grand jury. Plainly, if that investigative body wanted to look at petitioner's books and records, it could subpoena them itself. Moreover, had the government wanted to prosecute petitioner, it could have proceeded directly to that end, since petitioner's untimely and inadequate filings, and its refusal to permit access to records, constitute clear criminal violations under 22 U.S.C. 618(a). Instead, the government has chosen to exercise the least obtrusive remedy that Congress has made available to vindicate the policies of the Act, and on this record it can hardly be accused of bad faith.[16]

We also point out that what the government seeks here is enforcement of a statutorily-authorized access to books and records that Congress has required to be maintained by a person who decides to engage in the long controlled and closely regulated activities of

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[16] Petitioner's reliance on Internal Revenue summons cases to require some additional showing of good faith by the government in this proceeding is misplaced. Those decisions depend on a construction of the Internal Revenue Code, and the Court has held in that context that it is the party resisting enforcement who has the burden of showing abuse of process. *United States* v. *Powell*, 379 U.S. 48, 58. As we have indicated, petitioner has not come close to making such a showing in this case. In any event, there is no constitutional barrier to the use of civil investigative tools to inquire into what may be criminal conduct, where, as here, there has been no recommendation of a criminal prosecution. *Donaldson* v. *United States*, 400 U.S. 517, 535-536.

a foreign agent. As we earlier explained, Congress made the considered judgment that production of such information is essential to very significant and legitimate government and public interests. In these circumstances, the Fourth Amendment affords petitioner no grounds for refusing to perform its obligation under the Act's disclosure provisions. See *Shapiro* v. *United States*, 335 U.S. 1, 32, 34; *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72, 77; *United States* v. *Biswell*, 406 U.S. 311, 314-317.

## CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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